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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,465	11/15/2005	Atakan Peker	L2:00537	6325
71897 7590 09/24/2009 KAUTH, POMEROY, PECK & BAILEY, LLP 2875 MICHELLE DRIVE SUITE 110 IRVINE, CA 92606				
EXAMINER WYSZOMIERSKI, GEORGE P				
ART UNIT 1793		PAPER NUMBER		
NOTIFICATION DATE 09/24/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO@KPPB.COM

Office Action Summary

Application No.

10/523,465

Applicant(s)

PEKER ET AL.

Examiner

George P. Wyszomierski

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1793

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8-10,12 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8-10,12, and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The Amendment filed June 5, 2009 has been entered. Claims 1, 2, 4, 5, 8-10, 12, and 17-20 are pending in this application.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 2, 4, 5, 8-10, 12, and 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

This rejection is for substantially the reasons as detailed in the Office Action of February 11, 2009. Briefly, the present specification does not set forth any specific examples of alloys according to the claims as presently amended, and does not provide one with any particular guidance as to what alloy compositions would possess the combination of properties as defined in independent claim 1. Pages 4-5 of the specification do, however, incorporate by reference a number of prior art documents, and state that those documents disclose "exemplary" materials of the invention. A careful review of those documents reveals very few embodiments that are "free from Ni, Al and Be" as claimed, and that those few embodiments have a glass transition temperature outside the range required by the instant claims. Thus, the examiner's position is that the specification as filed does not provide support for the invention as presently claimed.

4. In a response filed June 5, 2009, Applicant alleges that U.S. Patents 5,618,359 and 5,735,975, which are incorporated by reference in the specification as filed, provide support for compositions as presently claimed. Specifically, these patents disclose compositions that lack beryllium, allegedly disclose compositions that lack nickel (in that cobalt is disclosed as an alternative to nickel in those patents), that the '359 patent clearly discloses compositions that lack aluminum and the '975 patent allegedly discloses compositions that lack aluminum (in that zinc is disclosed as an alternative to aluminum in the '975 patent). The examiner has considered the disclosures of these patents, and disagrees with applicant's position because:

a) While the disclosures of the '359 and '975 patents are broad enough to include compositions that lack nickel, both of these patents set forth dozens of specific examples of the compositions employed in those patents. Each and every specific embodiment disclosed in the two patents contains a substantial amount of nickel; see Lin '359 Tables I and II or Lin '975 Table I.

b) While the disclosure of the '975 patent is broad enough to include compositions that lack aluminum, this patent sets forth dozens of specific examples of the compositions employed in that patent. Each and every specific embodiment disclosed in the '975 patent contains a substantial amount of aluminum; see Lin '975 Table I.

c) Even if one were to read the '359 and '975 patents as disclosing compositions lacking nickel and aluminum, these patents do not disclose which, if any, of such compositions would possess the physical properties as required by the instant claims.

Nothing described in the specification as filed would have taught one of ordinary skill in the art a material possessing all of the features as required by the independent claim. Thus, claim 1 and all claims dependent thereon are held to have not been described in the specification as originally filed.

5. The terminal disclaimer filed on June 5, 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent which may issue from U.S. Serial No. 10/524,954 has been reviewed and is accepted. The terminal disclaimer has been recorded.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/George Wyszomierski/
Primary Examiner
Art Unit 1793

GPW
September 21, 2009